IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 298 OF 2002

1. Shri Jagadev R. Pangam,
since deceased through
his legal heirs:
1a. Subhash J. Pangam,
aged about 53 years,
s/o defendant no.1,
r/o Gokulwadi,
Sanquelim, Goa,

1b. Smt. Priti Subhash
Pangam, aged about
45 years, daughter-in-law
of deft. no.1, Gokulwadi,
Sanquelim, Goa, and

1c. Shri Datta J. Pangam,
aged about 49 years,
s/o deceased defendant
no.1. ... Petitioners.

Versus

1. Shri Shivanand V.
Salgaocar, and

2. Shri Dattaraj V.
Salgaocar, by their
Constituted Attorney,
Shri Epifanio Fernandes,
Alto Chicalim, Goa. ... Respondents.

Shri S. R. Rivonkar with Ms. A. Fadte, advocates for the petitioners.

Shri A. F. Diniz, advocate for the respondents.

CORAM: P. V. KAKADE, J.

DATE: 17th October, 2002.

ORAL JUDGMENT

Rule. Rule returnable fortwith by consent. Heard learned counsel for both the sides.

2. The small but subtle points involved in this Writ Petition are whether the amended provisions of the Code

of Civil Procedure must be adhered to strictly holding that not more than three adjournments can be granted to the parties once the evidence starts, inspite of the fact that the adjournments were sought on the ground of illness of the advocate. The next question involved would be whether the amended provision of Order 17 Rule 1 of the Code of Civil Procedure, would restrict the powers of the Court to grant more than three adjournments, though adjournment is sought under the proviso (d) to Sub-rule 2 of Rule 1 of Order 17 of the Code of Civil Procedure.

3. The petition is directed against the refusal of the Civil Judge, Senior Division, Vasco da Gama, to grant adjournment on 31st July, 2002, to the petitioners/defendants in the suit due to sickness of their advocate and thereby closing the defendants' evidence and fixing the case for final arguments in Special Civil Suit No.79 of 1987.

The impugned Order and application on which the said Order was passed dated 31st July, 2002, on scrutiny show that the defendants moved the application stating that the advocate was not well and, as such, unable to appear in Court on that day to lead evidence and, therefore, adjournment was sought to any future date. The learned Civil Judge, after hearing the parties passed order to the effect that by Notice dated 15th June, 2002 the advocates

were informed that the matter would be taken up for day-to-day hearing from 8th July, 2002. Inspite of the same, four opportunities were given to the defendants to lead evidence considering the circumstance that his advocate was in difficulty. On the last date of hearing time was granted, with cost of Rs.l00/-. In view of the amendment of the provisions of the Code of Civil Procedure, not more than three adjournments could be given to the party after the evidence started and, therefore, the application came to be dismissed.

A perusal of Rule 1 of Order 17 shows that it stipulates that the Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them and may, from time to time, adjourn the hearing of the suit for reasons to be recorded, provided that no such adjournment shall be granted more than three times to a party during the hearing of the suit. Therefore, the proviso to Rule 1 of Order 17 of the Code of Civil Procedure uses the word, "shall" and restricts the discretion of the Court to grant adjournments on more than three occasions to a party during the hearing of the suit. Sub-rule (2) provides for costs of adjournment and stipulates that in every such case the Court shall fix a day for the further hearing of the suit on making order regarding costs. Clause (d) of the proviso to Rule 2 states that where the illness of a pleader or his inability to conduct the case for any

reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.

This is the provision which is sought to be relied upon by the present petitioners/defendants to seek indulgence of the Court to set aside the Order of the learned Civil Judge, Senior Division, Vasco da Gama, passed on their application dated 31st July, 2002. No doubt that Clause (d) to the proviso to Sub-rule (2) of Order 17 of the Code of Civil Procedure provides a rider to the blanket ban for adjournment on the ground of absence of advocate, by stating that such adjournment would be granted if the Court is satisfied that the party applying for adjournment could not have engaged another pleader in time. In the present case before us, the copies of the roznama as well as other record, including the impugned Order of the Court show that prior to 31st July, 2002, i.e. the date of the impugned Order, there was notice dated 15th June, 2002, informing the advocates that the matter would be taken up for day-to-day hearing from 8th July, 2002. The record further shows that inspite of the same aspect, as many as four opportunities were given to the defendants to lead evidence, considering the circumstances that their advocate was in difficulty. On the last date of hearing he was also saddled with costs and,

therefore, under these circumstances, finally the application dated 31st July, 2002, came to be dismissed. In my view, by virtue of the amended provisions of the Code of Civil Procedure, no discretion was left to the learned Civil Judge, Senior Division, to grant time for more than three occasions. However, it is obvious from the record that inspite of such bar, the learned Civil Judge, Senior Division, was sufficiently indulgent to the cause of the defendants that their advocate was not well and on that count, as many as three adjournments were granted earlier, and the fourth adjournment was granted on payment of costs, but still application was filed again to obtain time, which, in my view, was rightly rejected by the learned trial Judge.

In this connection, it must be noted that the interests of justice demand that the proceedings before the Civil Courts are completed as expeditiously as possible and effective work is done in every case on each date of hearing. The amendments were effected in the Code of Civil Procedure with this very view and no party should be allowed to take advantage of the lenient view taken by the Civil Courts and they are required to adhere to the procedural discipline while conducting the suit. In the present case before us the defendants had ample opportunity to engage another lawyer to prosecute their cause in the said suit, but they did not avail of the same and kept on asking for adjournments and on the fourth occasion it was rightly

rejected by the learned Civil Judge, Senior Division and, therefore, I am not inclined to interfere with the Order passed by the learned Civil Judge, Senior Division, who has finally imposed the procedural and judicial discipline by virtue of the said Order.

4. In the result, Rule discharged. The Writ Petition stands dismissed and is disposed of with no order as to costs.

P. V. KAKADE, J.

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